

MERCHANT, GOULD, SMITH, EDELL, WELTER & SCHMIDT

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: POWDER PROCESSING

The specification of which

- a. is attached hereto
- b. was filed on _____ as application serial no. _____ and was amended on _____ (if applicable) (in the case of a PCT-filed application) described and claimed in international no. _____ filed _____ and as amended on _____ (if any), which I have reviewed and for which I solicit a United States patent.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (attached hereto).

I hereby claim foreign priority benefits under Title 35, United States Code, § 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

- a. no such applications have been filed.
- b. such applications have been filed as follows:

FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119

COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

ALL FOREIGN APPLICATION(S), IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S)

COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

I hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)

I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below:

U.S. PROVISIONAL APPLICATION NUMBER	DATE OF FILING (Day, Month, Year)

I hereby appoint the following attorney(s) & or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Albrecht, John W.	Reg. No. 40,481	Lacy, Paul E.	Reg. No. 38,946
Anderson, Gregg I.	Reg. No. 28,828	Larson, James A.	Reg. No. 40,443
Ansems, Gregory M.	Reg. No. 42,264	Lasky, Michael B.	Reg. No. 29,555
Batzli, Brian H.	Reg. No. 32,960	Liepa, Mara E.	Reg. No. 40,066
Beard, John L.	Reg. No. 27,612	Lindquist, Timothy A.	Reg. No. 40,701
Berman, Charles	Reg. No. 29,249	Lynch, David W.	Reg. No. 36,204
Black, Bruce E.	Reg. No. 41,622	Marschang, Diane L.	Reg. No. 35,600
Blasdell, Thomas L.	Reg. No. 31,329	McDaniel, Karen D.	Reg. No. 37,674
Bogucki, Raymond A.	Reg. No. 17,426	McDonald, Daniel W.	Reg. No. 32,044
Bruess, Steven C.	Reg. No. 34,130	McIntyre, Iain A.	Reg. No. 40,337
Byrne, Linda M.	Reg. No. 32,404	McKenzie Denise L.	Reg. No. P-43,790
Carlson, Alan G.	Reg. No. 25,959	Mueller, Douglas P.	Reg. No. 30,300
Carter, Charles G.	Reg. No. 35,093	Nasiedlak, Tyler L.	Reg. No. 40,099
Caspers, Philip P.	Reg. No. 33,227	Nelson, Albin J.	Reg. No. 28,650
Chiapetta, James R.	Reg. No. 39,634	Parker, Sandra M.	Reg. No. 36,233
Clifford, John A.	Reg. No. 30,247	Pauly, Daniel M.	Reg. No. 40,123
Cochran, William W.	Reg. No. 26,652	Plunkett, Theodore	Reg. No. 37,209
Daignault, Ronald A.	Reg. No. 25,968	Pytel, Melissa J.	Reg. No. 41,512
Daley, Dennis R.	Reg. No. 34,994	Reich, John C.	Reg. No. 37,703
Dalglish, Leslie E.	Reg. No. 40,579	Reiland, Earl D.	Reg. No. 25,767
Daulton, Julie R.	Reg. No. 36,414	Rittmaster, Ted R.	Reg. No. 32,933
DeVries Smith, Kate	Reg. No. 42,157	Schmaltz, David G.	Reg. No. 39,828
DiPietro, Mark J.	Reg. No. 28,707	Schuman, Mark D.	Reg. No. 31,197
Edell, Robert T.	Reg. No. 20,187	Schumann, Michael D.	Reg. No. 30,422
Epp Ryan, Sandra	Reg. No. 39,667	Sebald, Gregory A.	Reg. No. 33,280
Farber, Michael B.	Reg. No. 32,612	Skoog, Mark T.	Reg. No. 40,178
Funk, Steven R.	Reg. No. 37,830	Soderberg, Richard	Reg. No. -P-43,352
Glance, Robert J.	Reg. No. 40,620	Sumner, John P.	Reg. No. 29,114
Golla, Charles E.	Reg. No. 26,896	Sumners, John S.	Reg. No. 24,216
Gorman, Alan G.	Reg. No. 38,472	Tellekson, David K.	Reg. No. 32,314
Gould, John D.	Reg. No. 18,223	Trembath, Jon R.	Reg. No. 38,344
Gregson, Richard	Reg. No. 41,804	Underhill, Albert L.	Reg. No. 27,403
Gresens, John J.	Reg. No. 33,112	Vandenburgh, J. Derek	Reg. No. 32,179
Hamre, Curtis B.	Reg. No. 29,165	Vradenburgh, Anna M.	Reg. No. 39,868
Hillson, Randall A.	Reg. No. 31,838	Welter, Paul A.	Reg. No. 20,890
Johnston, Scott W.	Reg. No. 39,721	Whipps, Brian	Reg. No. 43,261
Kastelic, Joseph M.	Reg. No. 37,160	Wickhem, J. Scot	Reg. No. 41,376
Kettelberger, Denise	Reg. No. 33,924	Williams, Douglas J.	Reg. No. 27,054
Knearl, Homer L.	Reg. No. 21,197	Witt, Jonelle	Reg. No. 41,980
Komanduri, Janaki	Reg. No. 40,684	Wood, Gregory B.	Reg. No. 28,133
Kowalchyk, Alan W.	Reg. No. 31,535	Wood, William J.	Reg. No. 42,236
Kowalchyk, Katherine M.	Reg. No. 36,848	Xu, Min S.	Reg. No. 39,536
Kubota, Glenn M.	Reg. No. P-44,197		

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/ organization who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Merchant, Gould, Smith, Edell, Welter & Schmidt to the contrary.

Please direct all correspondence in this case to Merchant, Gould, Smith, Edell, Welter & Schmidt at the address indicated below:

Merchant, Gould, Smith, Edell,
Welter & Schmidt
Westwood Gateway II, Suite 400
11150 Santa Monica Blvd.
Los Angeles, CA 90025-3395

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2	Full Name Of Inventor	Family Name Hafermann	First Given Name Peter	Second Given Name M.
0	Residence & Citizenship	City Yorba Linda	State or Foreign Country California	Country of Citizenship Canada
1	Post Office Address	Post Office Address 21570 Duorobin Way	City Yorba Linda	State & Zip Code/Country California 92887 U.S.A.
Signature of Inventor 201: <i>Peter Hafermann</i>			Date:	1/29/99
2	Full Name Of Inventor	Family Name Gutierrez	First Given Name Emilio	Second Given Name J.
0	Residence & Citizenship	City New York	State or Foreign Country New York	Country of Citizenship U.S.A.
2	Post Office Address	Post Office Address 196 East 75th Street, Apt. 1A	City New York	State & Zip Code/Country New York 10021 U.S.A.
Signature of Inventor 202: <i>Emilio Gutierrez</i>			Date:	1/29/99
2	Full Name Of Inventor	Family Name Phillips	First Given Name Matthew	Second Given Name W.
0	Residence & Citizenship	City Tustin	State or Foreign Country California	Country of Citizenship U.S.A.
3	Post Office Address	Post Office Address 13408 Via Donbenito	City Tustin	State & Zip Code/Country California 92782 U.S.A.
Signature of Inventor 203: <i>Matthew Phillips</i>			Date:	1/29/99

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)–(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
 - (1) Each inventor named in the application;
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

ASSIGNMENT

WHEREAS, we, Peter M. Hafermann, residing at 21570 Dunrobin Way, Yorba Linda, California 92887, and Emilio J. Gutierrez, residing at 196 East 75th Street, Apt. 1A, New York, New York 10021, and Matthew W. Phillips residing at 13408 Via Donbenito, Tustin, California 92782, made certain new and useful inventions and improvements for which we are filing an application for Letters Patent of the United States herewith, which is entitled POWDER PROCESSING.

AND WHEREAS, Botanicals International, a corporation organized and existing under and by virtue of the laws of the State of Delaware, and having an office and place of business at 2550 El Presidio Street, Long Beach, California 90810-1193 (hereinafter "Assignee") is desirous of acquiring the entire right, title and interest in and to said inventions, improvements and application and in and to the Letters Patent to be obtained therefor;

NOW THEREFORE, to all whom it may concern, be it known that for and in consideration of the sum of One Dollar and other good and valuable considerations, the receipt and sufficiency whereof is hereby acknowledged, we have sold, assigned, and transferred, and by these presents do sell, assign and transfer unto said Assignee, its successors or assigns, the entire right, title and interest for all countries in and to all inventions and improvements disclosed in the aforesaid application, and in and to the application, all divisions, continuations, or renewals thereof, all Letters Patent which may be granted therefrom, and all reissues or extensions of such patents, and in and to any and all applications which have been or shall be filed in any foreign countries for Letters Patent on the inventions and improvements, including an assignment of all rights under the provisions of the International Convention, and all Letters Patent of foreign countries which may be granted therefrom; and we do hereby authorize and request the Commissioner of Patents and Trademarks to issue any and all United States Letters Patent for the aforesaid inventions and improvements to the Assignee as the assignee of the entire right, title and interest in and to the same, for the use of the Assignee, its successors and assigns.

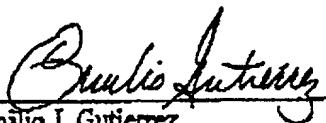
AND, for the consideration aforesaid, we do hereby agree that we and our executors and legal representatives will make, execute and deliver any and all other instruments in writing including any and all further application papers, affidavits, assignments and other documents, and will communicate to said Assignee, its successors and representatives all facts known to us relating to said improvements and the history thereof and will testify in all legal proceedings and generally do all things which may be necessary or desirable more effectually to secure to and vest in said Assignee, its successors or assigns the entire right, title and interest in and to the improvements, inventions, applications, Letters Patent, rights, titles, benefits, privileges and advantages hereby sold, assigned and conveyed, or intended so to be.

AND, furthermore we covenant and agree with said Assignee, its successors and assigns, that no assignment, grant, mortgage, license or other agreement affecting the rights and property herein conveyed has been made to others by us and that full right to convey the same as herein expressed is possessed by us.

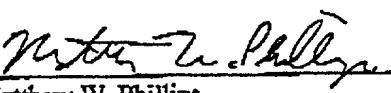
IN TESTIMONY WHEREOF, I have hereunto set my hand this 23 day of
January 29, 1999.


Peter M. Hafermann

IN TESTIMONY WHEREOF, I have hereunto set my hand this _____ day of
January 28, 1999.


Emilio J. Gutierrez

IN TESTIMONY WHEREOF, I have hereunto set my hand this _____ day of
January 28, 1999.


Matthew W. Phillips